
SENATE BILL 5240

State of Washington 59th Legislature 2005 Regular Session

By Senators Keiser, Kohl-Welles, Fraser, Prentice and Kline; by request of Department of Labor & Industries

Read first time 01/18/2005. Referred to Committee on Labor, Commerce, Research & Development.

1 AN ACT Relating to authorizing the director of labor and industries
2 to issue and enforce civil penalties for violations of the minimum wage
3 act and chapter 49.48 RCW; amending RCW 49.46.100, 49.48.020,
4 49.48.040, 49.48.060, and 49.48.070; adding new sections to chapter
5 49.48 RCW; adding new sections to chapter 49.46 RCW; creating a new
6 section; and prescribing penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The legislature finds that over five
9 thousand state residents per year file cases and complaints with the
10 department of labor and industries alleging they have been denied
11 payment for work they performed. The department of labor and
12 industries currently does not have an effective means of addressing
13 these complaints in order to ensure workers are paid the wages they are
14 owed.

15 The legislature further finds that the Washington state minimum
16 wage law and wage claim laws do not authorize adequate penalties
17 against violators. To improve compliance, the department of labor and
18 industries should be allowed to assess interest on back wages and

1 impose civil penalties against employers who are found to be not in
2 compliance with chapters 49.46 and 49.48 RCW.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.48 RCW
4 to read as follows:

5 (1) An employer shall pay each worker all wages due on an
6 established payday for each pay period.

7 (2) An employer found to have violated a provision requiring
8 payment of wages under chapter 49.12, 49.28, 49.30, 49.46, or 49.52 RCW
9 or this chapter in a citation or notice of assessment issued by the
10 director of labor and industries or the director's authorized
11 representative: Shall pay the wages due, including interest of up to
12 one percent per month on the unpaid wages, to the worker, and shall be
13 assessed a civil penalty of not more than ten times the wages due for
14 each violation per employee. Each day a violation occurs may
15 constitute a separate violation. The director or director's authorized
16 representative may also claim the remedies in RCW 49.52.070.

17 (3) The director of labor and industries may waive collection of a
18 penalty assessed under this chapter in whole or in part in favor of
19 payment of the employee's wages.

20 (4) The director of labor and industries, or the director's
21 authorized representative, may require payment of wages determined to
22 be unpaid and may assess civil penalties authorized by this section.
23 When considering the amount of penalties for multiple violations found
24 in a citation and notice of assessment, the director, or the director's
25 authorized representative, may consider the appropriateness of the
26 penalty with respect to the number of affected employees of the
27 employer being charged for each violation, the gravity of the
28 violations, the duration of the violations, the size of the employer's
29 business, the good faith of the employer, the history of previous
30 violations, and other relevant factors.

31 (5) Civil penalties imposed under this chapter shall be paid to the
32 director of labor and industries for deposit in the supplemental
33 pension fund established under RCW 51.44.033.

34 (6) The employer shall pay wages and the civil penalty amount
35 assessed under this section within thirty days of receipt of the
36 assessment or file an appeal of the citation or the assessment penalty
37 in writing to the director as provided in section 9 of this act.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.46 RCW
2 to read as follows:

3 (1) An employer found to have violated any of the provisions of
4 this chapter may be assessed a civil penalty of not less than one
5 hundred dollars and not more than one thousand dollars for each
6 violation per employee, and may be assessed a civil penalty of not more
7 than one thousand dollars for each subsequent violation found in the
8 citation or notice of assessment. Each day a violation occurs may
9 constitute a separate violation.

10 (2) Civil penalties imposed under this chapter shall be paid to the
11 director for deposit into the supplemental pension fund established
12 under RCW 51.44.033.

13 (3) The employer shall pay the civil penalty amount assessed under
14 this section within thirty days of receipt of the assessment or file an
15 appeal of the citation or the assessment penalty in writing to the
16 director, as provided in section 10 of this act.

17 **Sec. 4.** RCW 49.46.100 and 1959 c 294 s 10 are each amended to read
18 as follows:

19 (1) Any employer who hinders or delays the director or ((his)) the
20 director's authorized representatives in the performance of ((his)) the
21 director's duties in the enforcement of this chapter, or refuses to
22 admit the director or ((his)) the director's authorized representatives
23 to any place of employment, or fails to make, keep, and preserve any
24 records as required under the provisions of this chapter, or falsifies
25 any such record, or refuses to make any record accessible to the
26 director or ((his)) the director's authorized representatives upon
27 demand, or refuses to furnish a sworn statement of such record or any
28 other information required for the proper enforcement of this chapter
29 to the director or ((his)) the director's authorized representatives
30 upon demand, or pays or agrees to pay wages at a rate less than the
31 rate applicable under this chapter, or otherwise violates any provision
32 of this chapter or of any regulation issued under this chapter shall be
33 deemed in violation of this chapter and shall, upon conviction
34 therefor, be guilty of a gross misdemeanor.

35 (2) Any employer who discharges or in any other manner
36 discriminates against any employee because such employee has made any
37 complaint to his or her employer, to the director, or ((his)) the

1 director's authorized representatives that he or she has not been paid
2 wages in accordance with the provisions of this chapter, or that the
3 employer has violated any provision of this chapter, or because such
4 employee has caused to be instituted or is about to cause to be
5 instituted any proceeding under or related to this chapter, or because
6 such employee has testified or is about to testify in any such
7 proceeding shall be deemed in violation of this chapter and shall, upon
8 conviction therefor, be guilty of a gross misdemeanor.

9 **Sec. 5.** RCW 49.48.020 and 1971 ex.s. c 55 s 2 are each amended to
10 read as follows:

11 Any person, firm, or corporation which violates any of the
12 provisions of RCW 49.48.010 through 49.48.030 (~~and~~), 49.48.060, and
13 section 2 of this act shall be guilty of a misdemeanor.

14 **Sec. 6.** RCW 49.48.040 and 1987 c 172 s 1 are each amended to read
15 as follows:

16 (1) The department of labor and industries may:

17 (a) Conduct investigations to enforce section 2 of this act and to
18 ensure compliance with this chapter and chapters 39.12, 49.12, 49.28,
19 49.30, 49.46, and 49.52 RCW, upon obtaining information indicating an
20 employer may be committing a violation under these chapters ((39.12,
21 49.46, and 49.48 RCW, conduct investigations to ensure compliance with
22 chapters 39.12, 49.46, and 49.48 RCW));

23 (b) Order the payment of all wages owed the worker(~~s~~), including
24 interest of up to one percent per month on the unpaid wages to the
25 worker, and institute actions necessary for the collection of the sums
26 determined owed either under section 2 of this act or in a civil action
27 in the name of the department brought in superior court or other court
28 of competent jurisdiction of the county where the violation is alleged
29 to have occurred, or the department may use the procedures for
30 collection of wages in a court action set forth in this chapter and
31 chapter 49.52 RCW; and

32 (c) (~~Take assignments of wage claims and~~) Prosecute actions for
33 the collection of wages ((ef)), including interest of up to one percent
34 per month on the unpaid wages to the worker, for persons who are
35 financially unable to employ counsel when in the judgment of the

1 director of the department the claims are valid and enforceable (~~in~~
2 ~~the courts~~)).

3 (2) The director of the department or any authorized representative
4 may, for the purpose of carrying out RCW 49.48.040 through 49.48.080
5 and section 2 of this act: (a) Issue subpoenas to compel the
6 attendance of witnesses or parties and the production of books, papers,
7 or records; (b) administer oaths and examine witnesses under oath; (c)
8 take the verification of proof of instruments of writing; and (d) take
9 depositions and affidavits. If assignments for wage claims are taken,
10 court costs shall not be payable by the department for prosecuting such
11 suits.

12 (3) The director shall have a seal inscribed "Department of Labor
13 and Industries--State of Washington" and all courts shall take judicial
14 notice of such seal. Obedience to subpoenas issued by the director or
15 authorized representative shall be enforced by the courts in any
16 county.

17 (4) The director or authorized representative shall have free
18 access to all places and works of labor. Any employer or any agent or
19 employee of such employer who refuses the director or authorized
20 representative admission therein, or who, when requested by the
21 director or authorized representative, willfully neglects or refuses to
22 furnish the director or authorized representative any statistics or
23 information pertaining to his or her lawful duties, which statistics or
24 information may be in his or her possession or under the control of the
25 employer or agent, shall be guilty of a misdemeanor.

26 (5) An action for relief under this section shall be commenced
27 within three years after the cause of action accrues, unless a longer
28 period of time applies under law.

29 **Sec. 7.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended to
30 read as follows:

31 (1) If upon investigation by the director, (~~after taking~~
32 ~~assignments of any wage claim under RCW 49.48.040,~~) it appears to the
33 director that the employer is representing to his or her employees that
34 he or she is able to pay wages for their services and that the
35 employees are not being paid for their services, the director may
36 require the employer to give a bond in such sum as the director deems
37 reasonable and adequate in the circumstances, with sufficient surety,

1 conditioned that the employer will for a definite future period not
2 exceeding six months conduct his or her business and pay his or her
3 employees in accordance with the laws of the state of Washington.

4 (2) If within ten days after demand for such bond the employer
5 fails to provide the same, the director may commence a suit against the
6 employer in the superior court of appropriate jurisdiction to compel
7 him or her to furnish such bond or cease doing business until he or she
8 has done so. The employer shall have the burden of proving the amount
9 thereof to be excessive.

10 (3) If the court finds that there is just cause for requiring such
11 bond and that the same is reasonable, necessary or appropriate to
12 secure the prompt payment of the wages of the employees of such
13 employer and his or her compliance with RCW 49.48.010 through
14 49.48.080, the court shall enjoin such employer from doing business in
15 this state until the requirement is met, or shall make other, and may
16 make further, orders appropriate to compel compliance with the
17 requirement.

18 ~~((Upon being informed of a wage claim against an employer or former
19 employer, the director shall, if such claim appears to be just,
20 immediately notify the employer or former employer, of such claim by
21 mail. If the employer or former employer fails to pay the claim or
22 make satisfactory explanation to the director of his failure to do so,
23 within thirty days thereafter, the employer or former employer shall be
24 liable to a penalty of ten percent of that portion of the claim found
25 to be justly due. The director shall have a cause of action against
26 the employer or former employer for the recovery of such penalty, and
27 the same may be included in any subsequent action by the director on
28 said wage claim, or may be exercised separately after adjustment of
29 such wage claim without court action.))~~

30 **Sec. 8.** RCW 49.48.070 and 1935 c 96 s 4 are each amended to read
31 as follows:

32 It shall be the duty of the director of labor and industries to
33 inquire diligently for any violations of RCW 49.48.040 through
34 49.48.080 and section 2 of this act, and to institute the actions for
35 penalties herein provided, and to enforce generally the provisions of
36 RCW 49.48.040 through 49.48.080 and section 2 of this act.

1 NEW SECTION. **Sec. 9.** A new section is added to chapter 49.48 RCW
2 to read as follows:

3 A person, firm, or corporation aggrieved by a citation or notice of
4 assessment issued by the department of labor and industries under this
5 chapter may appeal the action or decision to the director of labor and
6 industries by filing notice of the appeal with the director within
7 thirty days of the department's issuance of a citation or notice of
8 assessment, otherwise the citation or notice of assessment is final and
9 binding. A notice of appeal filed under this section shall stay the
10 effectiveness of a citation or notice of the assessment of a penalty
11 pending review of the appeal by the director. Upon receipt of an
12 appeal, a hearing shall be held in accordance with chapter 34.05 RCW.
13 The director shall issue all final orders after the hearing. The final
14 orders are subject to appeal in accordance with chapter 34.05 RCW.
15 Orders that are not appealed within the time period specified in
16 chapter 34.05 RCW are final and binding.

17 NEW SECTION. **Sec. 10.** A new section is added to chapter 49.46 RCW
18 to read as follows:

19 A person, firm, or corporation aggrieved by a citation or notice of
20 assessment issued by the department of labor and industries under this
21 chapter may appeal the action or decision to the director of labor and
22 industries by filing notice of the appeal with the director within
23 thirty days of the department's issuance of a citation or notice of
24 assessment, otherwise the citation or notice of assessment is final and
25 binding. A notice of appeal filed under this section shall stay the
26 effectiveness of a citation or notice of the assessment of a penalty
27 pending review of the appeal by the director. Upon receipt of an
28 appeal, a hearing shall be held in accordance with chapter 34.05 RCW.
29 The director shall issue all final orders after the hearing. The final
30 orders are subject to appeal in accordance with chapter 34.05 RCW.
31 Orders that are not appealed within the time period specified in
32 chapter 34.05 RCW are final and binding.

33 NEW SECTION. **Sec. 11.** A new section is added to chapter 49.48 RCW
34 to read as follows:

35 Nothing in this chapter prohibits an employee from pursuing a

1 private right of action against an employer for unpaid wages. The
2 remedies provided for in this chapter are not exclusive and are
3 concurrent with any other remedy provided by law.

4 NEW SECTION. **Sec. 12.** A new section is added to chapter 49.46 RCW
5 to read as follows:

6 Nothing in this chapter prohibits an employee from pursuing a
7 private right of action against an employer for unpaid wages. The
8 remedies provided for in this chapter are not exclusive and are
9 concurrent with any other remedy provided by law.

10 NEW SECTION. **Sec. 13.** A new section is added to chapter 49.48 RCW
11 to read as follows:

12 (1) If an employer defaults in a payment, penalty, or fine payable
13 to the department of labor and industries after a final order is issued
14 under this chapter the director of labor and industries or the
15 director's designee may file with the clerk of any county within the
16 state, a warrant in the amount of the notice of assessment, plus
17 interest, penalties, and a filing fee of twenty dollars. The clerk of
18 the county in which the warrant is filed shall immediately designate a
19 superior court cause number for the warrant, and the clerk shall cause
20 to be entered in the judgment docket under the superior court cause
21 number assigned to the warrant, the name of the employer mentioned in
22 the warrant, the amount of payment, penalty, fine due on it, or filing
23 fee, and the date when the warrant was filed. The aggregate amount of
24 the warrant as docketed becomes a lien upon the title to, and interest
25 in, all real and personal property of the employer against whom the
26 warrant is issued, the same as a judgment in a civil case docketed in
27 the office of the clerk. The sheriff shall proceed upon the warrant in
28 all respects and with like effect as prescribed by law with respect to
29 execution or other process issued against rights or property upon
30 judgment in a court of competent jurisdiction. The warrant so docketed
31 is sufficient to support the issuance of writs of garnishment in favor
32 of the state in a manner provided by law in case of judgment, wholly or
33 partially unsatisfied. The clerk of the court is entitled to a filing
34 fee which will be added to the amount of the warrant. A copy of the
35 warrant shall be mailed to the employer within three days of filing
36 with the clerk.

1 (2)(a) The director of labor and industries or the director's
2 designee may issue to any person, firm, corporation, other entity,
3 municipal corporation, political subdivision of the state, a public
4 corporation, or any agency of the state, a notice and order to withhold
5 and deliver property of any kind when he or she has reason to believe
6 that there is in the possession of the person, firm, corporation, other
7 entity, municipal corporation, political subdivision of the state,
8 public corporation, or agency of the state, property that is or will
9 become due, owing, or belonging to an employer upon whom a notice of
10 assessment has been served by the department of labor and industries
11 for payments, penalties, or fines due to the department. The effect of
12 a notice and order is continuous from the date the notice and order is
13 first made until the liability out of which the notice and order arose
14 is satisfied or becomes unenforceable because of lapse of time. The
15 department shall release the notice and order when the liability out of
16 which the notice and order arose is satisfied or becomes unenforceable
17 by reason of lapse of time and shall notify the person against whom the
18 notice and order was made that the notice and order has been released.

19 (b) The notice and order to withhold and deliver must be served by
20 the sheriff of the county or by the sheriff's deputy, by certified
21 mail, return receipt requested, or by an authorized representative of
22 the director. A person, firm, corporation, other entity, municipal
23 corporation, political subdivision of the state, public corporation, or
24 agency of the state upon whom service has been made shall answer the
25 notice within twenty days exclusive of the day of service, under oath
26 and in writing, and shall make true answers to the matters inquired of
27 in the notice and order. Upon service of the notice and order, if the
28 party served possesses any property that may be subject to the claim of
29 the department, the party shall promptly deliver the property to the
30 director or the director's authorized representative. The director
31 shall hold the property in trust for application on the employer's
32 indebtedness to the department, or for return without interest, in
33 accordance with a final determination of a petition for review. In the
34 alternative, the party shall furnish a good and sufficient surety bond
35 satisfactory to the director conditioned upon final determination of
36 liability. If a party served and named in the notice fails to answer
37 the notice within the time prescribed in this section, the court may
38 render judgment by default against the party for the full amount

1 claimed by the director in the notice, together with costs. If a
2 notice is served upon an employer and the property subject to it is
3 wages, the employer may assert in the answer all exemptions provided
4 for by chapter 6.27 RCW to which the wage earner is entitled.

5 (3) In addition to the procedure for collection of a payment,
6 penalty, or fine due to the department of labor and industries as set
7 forth in this section, the department may recover civil penalties
8 imposed under this chapter in a civil action in the name of the
9 department brought in a court of competent jurisdiction of the county
10 where the violation is alleged to have occurred.

11 (4) This section does not affect other collection remedies that are
12 otherwise provided by law.

13 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.46 RCW
14 to read as follows:

15 (1) If an employer defaults in a payment, penalty, or fine payable
16 to the department of labor and industries after a final order is issued
17 under this chapter, the director of labor and industries or director's
18 designee may file with the clerk of any county within the state a
19 warrant in the amount of the notice of assessment, plus interest,
20 penalties, and a filing fee of twenty dollars. The clerk of the county
21 in which the warrant is filed shall immediately designate a superior
22 court cause number for the warrant, and the clerk shall cause to be
23 entered in the judgment docket under the superior court cause number
24 assigned to the warrant, the name of the employer mentioned in the
25 warrant, the amount of payment, penalty, fine due on it, or filing fee,
26 and the date when the warrant was filed. The aggregate amount of the
27 warrant as docketed becomes a lien upon the title to, and interest in,
28 all real and personal property of the employer against whom the warrant
29 is issued, the same as a judgment in a civil case docketed in the
30 office of the clerk. The sheriff shall proceed upon the warrant in all
31 respects and with like effect as prescribed by law with respect to
32 execution or other process issued against rights or property upon
33 judgment in a court of competent jurisdiction. The warrant so docketed
34 is sufficient to support the issuance of writs of garnishment in favor
35 of the state in a manner provided by law in case of judgment, wholly or
36 partially unsatisfied. The clerk of the court is entitled to a filing

1 fee which will be added to the amount of the warrant. A copy of the
2 warrant shall be mailed to the employer within three days of filing
3 with the clerk.

4 (2)(a) The director of labor and industries or the director's
5 designee may issue to any person, firm, corporation, other entity,
6 municipal corporation, political subdivision of the state, a public
7 corporation, or any agency of the state, a notice and order to withhold
8 and deliver property of any kind when he or she has reason to believe
9 that there is in the possession of the person, firm, corporation, other
10 entity, municipal corporation, political subdivision of the state,
11 public corporation, or agency of the state, property that is or will
12 become due, owing, or belonging to an employer upon whom a notice of
13 assessment has been served by the department of labor and industries
14 for payments, penalties, or fines due to the department. The effect of
15 a notice and order is continuous from the date the notice and order is
16 first made until the liability out of which the notice and order arose
17 is satisfied or becomes unenforceable because of lapse of time. The
18 department shall release the notice and order when the liability out of
19 which the notice and order arose is satisfied or becomes unenforceable
20 by reason of lapse of time and shall notify the person against whom the
21 notice and order was made that the notice and order has been released.

22 (b) The notice and order to withhold and deliver must be served by
23 the sheriff of the county or by the sheriff's deputy, by certified
24 mail, return receipt requested, or by an authorized representative of
25 the director. A person, firm, corporation, other entity, municipal
26 corporation, political subdivision of the state, public corporation, or
27 agency of the state upon whom service has been made shall answer the
28 notice within twenty days exclusive of the day of service, under oath
29 and in writing, and shall make true answers to the matters inquired of
30 in the notice and order. Upon service of the notice and order, if the
31 party served possesses any property that may be subject to the claim of
32 the department, the party shall promptly deliver the property to the
33 director or the director's authorized representative. The director
34 shall hold the property in trust for application on the employer's
35 indebtedness to the department, or for return without interest, in
36 accordance with a final determination of a petition for review. In the
37 alternative, the party shall furnish a good and sufficient surety bond
38 satisfactory to the director conditioned upon final determination of

1 liability. If a party served and named in the notice fails to answer
2 the notice within the time prescribed in this section, the court may
3 render judgment by default against the party for the full amount
4 claimed by the director in the notice, together with costs. If a
5 notice is served upon an employer and the property subject to it is
6 wages, the employer may assert in the answer all exemptions provided
7 for by chapter 6.27 RCW to which the wage earner is entitled.

8 (3) In addition to the procedure for collection of a payment,
9 penalty, or fine due to the department of labor and industries as set
10 forth in this section, the department may recover civil penalties
11 imposed under this chapter in a civil action in the name of the
12 department brought in a court of competent jurisdiction of the county
13 where the violation is alleged to have occurred.

14 (4) This section does not affect other collection remedies that are
15 otherwise provided by law.

16 NEW SECTION. **Sec. 15.** A new section is added to chapter 49.48 RCW
17 to read as follows:

18 The director of labor and industries may adopt rules to carry out
19 the purposes of this chapter.

20 NEW SECTION. **Sec. 16.** A new section is added to chapter 49.46 RCW
21 to read as follows:

22 The director may adopt rules to carry out the purposes of this
23 chapter.

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